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**ON (THE LAW OF) WAR:
WHAT CLAUSEWITZ *MEANT* TO SAY**

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Carl von Clausewitz' theories on military strategy and war have become so ingrained in American military thought that, today, almost every U S engagement fought or planned relies heavily on his concepts. It is therefore quite unfortunate that his most polished writing—the only part of his manuscript he considered ready for publication prior to his untimely death—contains only one specific reference to the law of war.

War is an act of force to compel an enemy to do our will. Attached to force are certain self-imposed, imperceptible limitations hardly worth mentioning, known as international law and custom, but they scarcely weaken it. Force—that is, physical force, for moral force has no existence save as expressed in the state and the law—is thus the means of war, to impose our will on the enemy is its object.

It is unfortunate for two reasons. First, this passage suggests that Clausewitz considered international law irrelevant to war.¹ Although this may be true, one of this paper's two objectives is to demonstrate that his conclusion was probably *not* based on a notion that the law of war was *unimportant at the time*. Rather, he probably considered it irrelevant because its application to war in his era did not appreciably affect its character. Because his principles defined how armies waged war against each other, he likely was not concerned about existing rules that limited, for example, the application of force against noncombatants. Second and more important, since this is Clausewitz' only specific reference to the law of war, his current-day disciples might infer that it is unimportant to the formulation of military strategy and tactics *today*. This paper's other objective is to refute that inference. In fact, the opposite is true: the law of war is and should continue to be a significant factor in the formulation of strategy.

To achieve these two objectives, I will first examine the context of Clausewitz' assertion. By demonstrating that the law of war was an integral part of European warfare in his day, I hope to show that far from being "imperceptible," it helped define European armies. Second, to Clausewitzians who may take his statement at face value and thereby consider the law of war

incompatible with the modern application of his principles, I offer examples illustrating how the law and some of those principles actually reinforce each other

The Law of War was Important *Then . . .* and Clausewitz Knew It

Some students of Clausewitz have translated his cryptic passages by putting them into the context of his life and experiences. That context is also critical to understanding his views on and exposure to laws of war. Before Clausewitz' time, particularly during the "Wars of Religion" that ended in the mid-seventeenth century, wars generally were brutal and unrestrained. Since religious and ideological differences motivated the combatants, these wars were literally "no holds barred" affairs. Characteristic of this approach to war, a senior French marshal once remarked, "if I could call all the devils in Hell to beat out the brains of an enemy that would beat out mine, I would do it with all my heart."² It did not matter whether that enemy was a combatant or a noncombatant.

After 1648, when the last of these wars—the Thirty Years' War—ended, Europe entered an age of limited war in which smaller, professional armies fought each other to achieve relatively modest political and territorial objectives.³ Intent on avoiding the excesses that plagued the religious wars, European sovereigns took steps toward limiting the impact of future conflicts. In addition to establishing formal courses of study for their officers, most of whom were nobility or at least members of the upper class, they revived chivalry by adopting formal Articles of War that imposed strict rules governing treatment of prisoners, noncombatants, and private property.⁴ In the early 1800s, Clausewitz attended and taught at the Prussian War College. His seemingly cynical reference to international law, above, at least clearly shows that at this or some other point in his military career, he was exposed to these rules and understood their roots and purposes.

One last bit of historical evidence that will help Americans understand Clausewitz' historical context is the fact that George Washington, who lived in the same general time frame, patterned the Continental Army after its European counterparts. In addition to learning strategy, tactics, and training from the European armies, General Washington also adopted their respect for international law. It was this commitment to the law of war that convinced him to reject guerilla warfare methods against the British in favor of a conventional war that arrayed two professional armies against each other on a battlefield.⁵

Appreciating Clausewitz' true views on the law of war also requires at least a basic understanding of some of its principles and purposes. This, in turn, requires a brief discussion of Hugo Grotius, the father of modern international law. Grotius, a Dutch lawyer and philosopher, died three years before the end of the Thirty Years' War. His most important work, *On the Law of War and Peace*, was as influential to the study of international law as Clausewitz' *On War* was to the study of war. The parallels do not end there. Just as Clausewitz' experience in war motivated him to describe the relationship between political objectives and the use of force, the sheer brutality of the Thirty Years' War moved Grotius to suggest ways to regulate violence. His ideas formed the basis of the military codes of conduct that emerged in the 1700s—the codes Clausewitz appeared to minimize in his work.

Grotius articulated fundamental principles that were generally observed in Clausewitz' era and survive to this day in the forms of military necessity, proportionality, and humanity. All three concepts spring from the basic idea that "the prohibition against intentionally harming other human beings is set aside in warfare only to the extent that combatants of opposing belligerent nations may rightfully attack one another."⁶ Military necessity allows use of force when necessary to achieve legitimate military objectives. This is the principle that today governs the selection of targets. Armed forces may attack only those targets the destruction of which will

impair the enemy's ability to make war. Since attacking noncombatants produces no such impact, this is also the rule that protects them. Proportionality is a closely related principle that prohibits use of force greater than necessary to accomplish legitimate military objectives. Since excessive force can injure or kill noncombatants, this rule also obligates armed forces to minimize collateral civilian damage. Finally, the law of war principle of humanity prohibits the infliction of unnecessary suffering. Grotius regarded wounded combatants who are unable to continue fighting as "innocents."⁷ This principle protects combatants from attack with weapons that continue to cause injury after their combatant status ends.

Against this complex backdrop, it was not unreasonable for Clausewitz to regard international law as irrelevant to the application of force. By the time he observed war and wrote his masterpiece, the excesses prevalent during the Thirty Years' War had already been moderated. The wars he saw were relatively restrained contests between professional armies whose methods and objectives were far more limited than before. Their common method was the application of force almost exclusively against the enemy army. Their objectives were primarily political; they rarely included the deep ideological or religious motives that spun the Thirty Years' War out of control. Therefore, despite witnessing and participating in numerous bloody battles, it is doubtful that Clausewitz was able to fully experience the true extent to which the law of war regulated force. Nevertheless, he understood intellectually, as Grotius did, that violence must be curbed, and appreciated, as George Washington did, the law's value to warfare.

Clausewitz' dialectic contrast between absolute and limited war revealed his understanding and appreciation of the law of war. Clausewitz the absolutist regarded pure war as a "complete, untrammelled, absolute manifestation of violence [which] would of its own independent will usurp the place of policy the moment policy had brought it into being."⁸ In other words, absolute war is the unrestrained use of violent force intended to impose one's will

on the enemy. As for the law of war in this context, he added “to introduce the principle of moderation into the theory of war itself would always lead to logical absurdity.”⁹ Just as quickly as he defined it, however, he acknowledged that absolute war in its pure form is not achievable. “War is never an isolated act,” he wrote, war can never be disconnected from men and their affairs. Men, their goals, feelings, and intellect inevitably moderate the *practice* of war even if moderation in the *theory* of war would be logically absurd.

Clausewitz the realist understood that the practice of war is limited war, but what are its limits? He describes the most important one in his most famous quote: “War is merely the continuation of policy by other means.”¹⁰ In other words, policy is the national objective and war is the means of achieving it. Within the broad context of policy lay numerous subsidiary goals and considerations. One is the achievement of peace. After World War I, Captain B. H. Liddell Hart vilified Clausewitz because his theory of absolute war “looked only to the end of war, not beyond war to the subsequent peace.”¹¹ Not only was this indictment not entirely true, it totally missed Clausewitz’ point that absolute war exists only in theory because policy dictates how war is waged and thereby limits its prosecution.¹² Indeed, Abraham Lincoln seized on this idea that ultimate peace is one policy objective of war when he adopted General Order 100, the Union Army’s law of war directive, as a way to regulate force and avoid intractable hatred between the North and South.

Another constraint Clausewitz ascribed to limited war is its dependence on the characteristics of the men fighting it. In this context, Clausewitz described hostile feelings and hostile intentions as the two different motives that make men fight one another.¹³ Hostile feelings are based on emotion and instinct while hostile intentions are purely rational, based on intellect. Both are present to varying degrees in any conflict among men, the proportion in

which they are mixed dictates how wars are fought and how long they will last. Thus, in a point relevant to this discussion, Clausewitz concluded

If, then, civilized nations do not put their prisoners to death or devastate cities and countries, it is because intelligence plays a larger part in their methods of warfare and has taught them more effective ways of using force than the crude expression of instinct.¹⁴

However, he added

The invention of gunpowder and the constant improvement of firearms are enough in themselves to show that the advance of civilization has done nothing practical to alter or deflect the impulse to destroy the enemy, which is central to the very idea of war.

His first observation—consistent with his concept of limited war—assumed that the “civilized” men of his era were not only capable of regulating, but actually did regulate the application of force. The second expressed his thought that, despite their capacity for moderating force, man nevertheless is fundamentally a warlike creature. Together, they lead to the conclusion that Clausewitz, rather than considering laws of war to be unimportant pacifist notions, believed they simply reflected man’s evolution from instinct to intellect. In his more intelligent search for better methods of war, man abandoned targeting civilians in favor of more effective ways of killing his enemy on the battlefield.

Far from regarding laws of war to be unimportant, then, Clausewitz believed they imposed necessary limits on man’s ability to wage war. Against the backdrop of his experience, perspective, and views on war, Clausewitz’ first statement about the law’s “imperceptible limitations” should therefore be interpreted simply as his recognition that those limits, while important, did not appreciably alter war’s ultimate means or its object to compel an enemy to do one’s will. He assumed such self-control would be as much a part of future wars as it had been a part of the recent past and that it would make war more, not less, efficient.

The Law of War and Clausewitz Coexist and Remain Important *Today*

When one's tools are primitive, it is easier to focus them on narrow objectives. In this sense, self-control in Clausewitz' day was perhaps easier to achieve than it may be today. With limited resources—weapons and ammunition—and an enemy blocking an army's forward progress toward its ultimate political objective, it was easy to see that the immediate military object of war was the enemy's defeat. It was also easier to rationalize, whether one believed in the law of war or not, that those limited resources would be better employed against the enemy's army than wasted against its noncombatants. Thus, Clausewitz' conclusion that the law of war imposed an "imperceptible" limit on force recognized, at least in part, that force was already limited by practical and technological considerations.

When one's tools become more sophisticated, Clausewitz' dichotomy between the domination of intellect over instinct on the one hand and the constant improvement of firepower on the other becomes especially important. After World War I, with the advent of airplanes, weapons of mass destruction (WMD), and precision-guided weapons, this tension has become particularly strong. No longer must war be waged on the battlefield, today, the modern army's potential targets are truly limited only by policy.

This trend toward increased military effectiveness that Clausewitz heralded over 150 years ago brought the United States and similarly equipped nations to a crossroads in World War II. The road toward absolute war was our ability to combine the ferocity of chemical, nuclear, and high explosive weapons with advanced delivery systems like the airplane to bring the war to the enemy's entire population. As airpower pioneer Giulio Douhet prophesied, this road would lead to a breakdown of the distinction between soldier and civilian.¹⁵ The road toward limited war was restraint—the kind of restraint Liddell Hart wrote about when he described peace as war's ultimate objective.¹⁶ It required us to forego targeting civilians and thereby to move

toward the intellect side of Clausewitz' intellect-instinct balance. The result, of course, was that both sides took both roads. For example, after the Luftwaffe bombed London, both sides' strategic bombing campaigns indiscriminately targeted each other's civilian populations.¹⁷ However, whether because they had been outlawed in the 1925 Geneva Gas Protocol or because both sides considered the prospect of retaliation in kind too frightening a prospect, neither side used its stockpile of chemical weapons.

Where does all this leave us today? As more nations acquire or develop WMD capabilities, absolute war becomes a greater possibility. Yet, the recent end of the Cold War stands as an example of the restraining power of deterrence and provides optimism for the future. World War II demonstrated, on the one hand, that it is easy to succumb to the temptation to employ the most powerful weapons in one's arsenal against the enemy's will to fight. On the other hand, World War II and the Cold War also showed us that nations might still be dissuaded from using certain weapons in particular ways. This restraint is part of the policy that, hopefully, will define how we will conduct future wars. To the extent nations have *formally* agreed to some of these policies—for example, the policy against using chemical weapons—they have become part of the treaty-based law of war. Policies to which nations have *tacitly* agreed have become either customary laws of war or bases for deterrence. Today, the labels “law of war” and “deterrence” are not important, the key fact is that restraint exists. This restraint—Clausewitz' “intellect”—will continue to be a critical element of future wars.

Does the fact that the law of war is more pervasive and restrictive today than it was in Clausewitz' day make his theories any less relevant? The answer is definitely no. First, from a practical standpoint, many of the customary rules of military necessity, proportionality, and humanity are interpreted and respected today in much the same fashion as in the wars he fought.

and wrote about. The rules first applied in the eighteenth century have now achieved almost universal recognition as customary laws applicable to today's wars.

Second, many laws offset technology. As men develop new and more deadly ways to fight wars, international efforts to regulate them strive to keep up. The chemical weapon prohibition, first addressed in 1925, was recently reinforced in the Chemical Weapons Convention. Similar prohibitions have been imposed over the years on biological weapons, weapons designed or employed to cause unnecessary suffering (e.g., dum-dum bullets), and certain conventional weapons (e.g., landmines). Efforts are currently underway to regulate an even newer technology: blinding lasers. The point here is that although military technology has advanced geometrically since Clausewitz' day, law of war limitations have helped prevent war from evolving beyond a contest between military forces. Since that is essentially what Clausewitz wrote about, his theories remain relevant today.

Third, the rules simply increase the military efficiency Clausewitz intended his principles to achieve. Ideas such as "maximum exertion of strength," focusing power against the enemy's center of gravity, and "disarming the enemy" are methods of overcoming the enemy's resistance. It is reasonable to conclude from these principles—especially his discussion of offensive operations—that Clausewitz would regard targeting of civilians unconnected with the enemy's war effort to be as much a waste of time and resources as pauses, delays, and attacks on other than the enemy's center of gravity. Thus, many of the laws of war, especially those that distinguish legitimate from prohibited targets, actually help focus military power on important military objectives.

Finally, the law of war is a critical element of war's "paradoxical trinity." In his effort to define war in terms of its "dominant tendencies," Clausewitz wrote that three forces influence the nature of war: primordial violence or the "instinct" discussed earlier, chance and probability

which foster creativity, and the reason or “intellect” that underlies war’s political objectives. The object, he said, “is to develop a theory that maintains a balance between these three tendencies, like an object suspended between three magnets”¹⁸. As an element of reason, the laws of war prevent war from deteriorating into unregulated free-for-alls. In other words, by strengthening the “intellect magnet,” they help keep war within the trinity.

Conclusion

Over the years, Clausewitz’ dichotomy between absolute and limited war has confused many students of military theory—including me. However, once I was able to grasp his message, I understood his essential point was that absolute war is only a theory, in practice, limits exist. The question his book probed was how to conduct war successfully within those limits. Although the law of war may not have been a prominent constraint during Clausewitz’ era, it certainly was one of the factors that defined the conduct of the wars he wrote about. Today, those laws are no less relevant.

The enduring value of Clausewitz’ principles of war depends, in part, on the continuing validity of his basic assumption that war is limited. It is therefore ironic that his theories remain relevant today because the law of war—a concept he regarded skeptically—remains one of the key policies that regulate the conduct of war.

ENDNOTES

¹ Geoffrey Best, *Humanity in Warfare* (New York: Columbia University Press, 1980), 63

² Daniel R. Beaver, "Cultural Change, Technological Development, and the Conduct of War in the Seventeenth Century," *New Dimensions in Military History*, ed. Russell F. Weigley (San Rafael, CA: Presidio Press, 1975), 76

³ Russell F. Weigley, "American Strategy from Its Beginnings through the First World War," *Makers of Modern Strategy from Machiavelli to the Nuclear Age*, ed. Peter Paret (Princeton, NJ: Princeton University Press, 1986), 409

⁴ Beaver, 83

⁵ Weigley, *American Strategy*, 409-410

⁶ Paul Christopher, *The Ethics of War and Peace: an Introduction to Legal and Moral Issues*, (Englewood Cliffs, NJ: Prentice-Hall, 1994), 100

⁷ Christopher, 106

⁸ Clausewitz, 87

⁹ Carl von Clausewitz, *On War*, ed. and trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1976), 76

¹⁰ Clausewitz, 87

¹¹ Clausewitz, 40

¹² Although Clausewitz does not devote much time to the idea that peace is the ultimate objective of war, he does mention it on page 605

¹³ Clausewitz, 76

¹⁴ Clausewitz, 76

¹⁵ Giulio Douhet, *The Command of the Air*, trans. Dino Ferrari (New York, NY: Coward-McCann, Inc., rpt. Washington, DC: Office of Air Force History, 1983), 10

¹⁶ B. H. Liddell Hart, *Strategy*, 2nd rev. ed. (New York, NY: Penguin Books, 1991), 353-360

¹⁷ W. Hays Parks, *Air War and the Law of War*, 32 A. F. L. Rev. 53 (1990)

¹⁸ Clausewitz, 89